Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Richard E. George
Petitioner,

v.

Commissioner of Internal Revenue
Respondent.

On Petition For Writ Of Certiorari From The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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June, 2002

QUESTIONS PRESENTED

The main issue in this case is whether state citizens have immunity from unapportioned direct taxes imposed by the federal government in the form of the personal income/wage tax. The Ninth Circuit Court of Appeals ruled, "George is subject to the federal system of taxation." This ruling was made based on the position taken by the tax court and the United States Department of Justice, acting on behalf of the Attorney General of the United States, that the Sixteenth Amendment to the United States Constitution authorizes an unapportioned direct tax on state citizens. This holding abridges the Article I immunity from unapportioned direct taxes as agreed to when the Constitution went into operation on March 4th, 1789 and raises substantial federal questions that warrant immediate review by this Court:

1. Whether the Sixteenth Amendment to the Constitution of the United States authorizes an unapportioned direct tax in violation of the direct taxing clauses in Article I and the immunity clause of the Fourteenth Amendment.

2. Whether an amendment to the Constitution can contain repugnant language and alter the fundamental nature of the constitutional compact and whether this violates the original intent of Article V and Article VI as well as the common sense definition of amendment, meaning to put right or make a correction.

3. Whether the terms of the Sixteenth Amendment to the Constitution of the United States have been properly disclosed to the American people and if there was a failure to give proper notice upon the proclaimed ratification of the Sixteenth Amendment in violation of Revised Statues and Public Disclosure law.

4. Whether the Commissioner, by seizing property and disclosing confidential return information, is in violation of Privacy Rules and the Fourteenth and Fifth Amendments.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard E. George, a citizen of the California Republic and the United States, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit. In plain contravention of the requirements of the United States Constitution and federal law, the Ninth Circuit Court proceeded in a manner designed to thwart the constitutional compact between the United States, the several states, and the citizens of the several states as well as considered judgments of the federal legislative branch. This Court's decision involves issues of the utmost importance because the vast majority of United States citizens are being unlawfully subjected to the federal personal income tax.

JURISDICTION

The judgment of the Ninth Circuit Court was submitted on December 17, 2001 and a denial of rehearing entered on March 18, 2002. The jurisdiction of this case rests on 28 U.S.C. Sec. 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 2, Clause 3 of the Constitution of the United States provides, "Representatives and direct Taxes shall be apportioned among the several States." (1789)

Article I, Section 9, Clause 4 of the Constitution provides, "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before direct to be taken."

Article V of the Constitution provides for amendments "when ratified by the Legislatures of three fourths of the several States." These ratified amendments are valid "to all Intents and Purposes, as part of" the Constitution.

Once an amendment is passed, Revised Statues, Sec. 205, requires, "the Secretary of State shall forthwith cause the

amendment to be published in the newspapers authorized to promulgate the laws." -Revised Statutes, 1878.

Article VI, Clause 2, provides "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; " "shall be the supreme Law of the Land", "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article VII provides, "The Ratification of the Conventions of nine States shall be sufficient for the Establishment of the Constitution between the States so ratifying the Same."

The Fifth Amendment provides that "No person" shall "be deprived of life, liberty, or property, without due process of law." (1791)

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part, that "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States." US CONST. amend. XIV, Sec. 1. (1868)

The Sixteenth Amendment provides, "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." (1913)

26 U.S.C. Sec. 6103 provides, in relevant part, "return information shall be confidential" and at Sec. 6103(b)(2) "return information" is defined to include "tax liability" and "deficiencies."

42 U.S.C. Sec. 1983 provides, in relevant part, "Every person who, under color of any statute," subjects "any citizen of the United States" "to the deprivation of any rights, privileges, or immunities secured by the Constitution" "shall be liable to the party injured."

STATEMENT OF THE CASE

Petitioner George submitted an "EXEMPT" form W4 with his employers and filed a "zero return" claiming no taxable income for the tax year 1997. Attached to the return was a document citing Constitutional provisions, Supreme Court decisions as well as federal statutes and regulations in support of George's constitutional exemption from paying unapportioned direct taxes.

The Commissioner rejected the return; claiming an amount due of $41,131; imposed a penalty of $500 for a frivolous return; and submitted a fraudulent notice of levy causing a Merrill Lynch stockbroker to sell stock assets in order satisfy a purported liability; thus depriving George of his immunity to unapportioned direct taxes, as secured by the Constitution. *See* 42 U.S.C. Sec. 1983.

A tax court petition was filed as a last resort to resolve the dispute. A "traditional return" was prepared and submitted to the Commissioner to show that *if* the federal tax code were applied, the amount due was nowhere near what the Commissioner claimed.

I. The Underlying Litigation

George's employers were summoned to tax court by the Commissioner and were present as adversarial witnesses. The Commissioner's counsel and the tax court announced, for all present to hear, that George had a "tax liability" and "deficiencies" in violation of George's privacy rights. *See* 26 U.S.C. Sec. 6103. To add insult to injury, the tax court would not allow George to bring forward the summoned witnesses to testify; a direct assault on George's right to Due Process, including the right to examine witnesses.

The tax court in prosecuting the Commissioner's case relied on the Sixteenth Amendment as authority for an unapportioned direct federal income tax. The tax court claimed its authority is a "well-established" matter. The court, however, was unable to cite Supreme Court decisions in support of this claim.

George's case relies on the following constitutional provisions:

1. Article 1, § 2, and § 9, provides immunity from unapportioned direct taxes;
2. the Fourteenth Amendment fortifies this immunity by prohibiting its abridgement;
3. therefore, the Sixteenth Amendment could not possibly be a law that abridges the constitutional immunity from direct taxes.

The congressional *Analysis and Interpretation of the Constitution*, Public Law 91-589, as authorized by Congress (1991) concurs, saying, "direct taxes must be levied by the rule of apportionment." This language is mandatory and unambiguous. As such, United States citizens have immunity from unapportioned direct taxes.

The term "amend," meaning: "To improve. To change for the better by removing defects or faults." (Black's Law, 6th Ed.). There have been twenty-six amendments to the Constitution; briefly summarized as follows:

I-X: The first ten amendments, the Bill of Rights, were meant to clarify the original meaning and protect the people's rights;

XI: clarified jurisdiction with regard to suits against a state;

XII: deals with electing the president and vice-president;

XIII: abolished slavery, removing a defective practice;

XIV: citizens' rights, fortifies Article I immunity clauses;

XV: establishes voting rights for blacks;

XVI: provides for an unapportioned income tax, thus impacting fundamental constitutional principles;

XVII: deals with election of senators

XVIII: prohibition of alcohol (subsequently repealed);

XIX: establishes voting rights for women;

XX: modifies executive and legislative terms of office;

XXI: repeals "prohibition;"

XXII: restricts presidential term of office;

XXIII: establishes the right to vote in the District of Columbia;

XXIV: prohibits a poll tax;

XXV: establishes presidential succession;

XXVI: lowers the voting age.

Of all the amendments (other than the Eighteenth, now repealed), the Sixteenth is the only one that doesn't fit the legal definition and constitutional intent of an amendment. Legally, the practice of apportionment of direct taxes has never been held to be defective and there is no possibility the income tax could be considered an improvement over excise taxes otherwise imposed. The Sixteenth Amendment, as interpreted by the Commissioner, abrogates fundamental rights secured by the Constitution, and as such is outside the proper scope of an amendment. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966). "All laws, rules and practices which are repugnant to the Constitution are null and void." *Marbury v. Madison*, 5 U.S. 137, 180 (1803). The only other amendment that may appear comparable is the Thirteenth, though it did not fundamentally change the Constitution as originally adopted. Slavery may have been tacitly accepted when the Constitution first went into operation; however, slavery is not a fundamental principle upon which the Constitution is grounded, as are apportionment and taxation.

The ratification of the Sixteenth Amendment was the direct consequence of the Supreme Court's decision in 1895 in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895), whereby the attempt of Congress the previous year to tax corporate income was held to be unconstitutional. A tax on incomes derived from property, the Court declared, was a "direct tax," which Congress under the terms of Article 1, § 2, and § 9, could impose only by the rule of apportionment. In keeping with this line of reasoning, the only possible constitutional interpretation is that the Sixteenth Amendment applies to corporate income or gain "arising from corporate activities." *See Doyle v. Mitchell*, 247 U.S. 179 (1918). Furthermore, "A corporation is not a citizen for purposes of the

privileges and immunities clause of the Fourteenth Amendment" *D.D.B. Realty Corp. v. Merrill*, 232 F.Supp. 629, 637.

A non-corporate state citizen, on the other hand, *is* protected by the privileges and immunities clause of the Fourteenth Amendment. No state has the legislative authority, by means of amendment or otherwise, to abridge a citizen's constitutional immunity from direct taxes. State citizens were exempt when the Constitution was adopted; the income tax, unless apportioned, was determined to be unconstitutional in the *Pollock* case; and it cannot become constitutional, as applied to non-corporate citizens, by amendment because of the fundamental principles involved, bolstered by the immunities clause of the Fourteenth Amendment.

The tax court, after hearing arguments and receiving evidence, reduced the purported liability to $26,466, but would not allow such itemized deductions as property taxes paid, even though clear evidence was presented. The issue of constitutional immunity was not properly addressed by the tax court and continues to be the primary issue on appeal. In addition, the tax court imposed sanctions for raising constitutional arguments. This "has the effect of seriously discouraging the exercise of a constitutional right, *e.g.* the right of appeal." *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct 2072, 23 L.Ed.2d 656.

II. Proceedings in the Ninth Circuit Court of Appeals

The Ninth Circuit Court of Appeals affirmed in part, vacated and remanded in part, the decision of the tax court.

The Commissioner, represented by counsel from the Attorney General's office, admits he relies upon the Sixteenth Amendment for his authority to impose a "non-apportioned direct income tax on United States citizens." *See Brief for Appelle* at p. 16. In support of his position, the Commissioner cites *United States v. Nelson* (9th Cir. 1989); thus disregarding Internal Revenue Manual, Section 4.10.7.2.9.8 (05-14-1999), which tells IRS employees: "Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular

taxpayer and the years litigated" and "The Internal Revenue Service must follow Supreme Court decisions."

The Commissioner also admits the following: (1) return information was disclosed to George's stockbroker at Merrill Lynch (violating 26 U.S.C. Sec. 6103); (2) a notice of levy was issued to Merrill Lynch; and (3) in response to the notice of levy, Merrill Lynch sent the Commissioner a check for $51,327.97. *See Brief for Appelle*, footnote at p. 9. In addition, the Commissioner caused the office of the San Mateo County Recorder to publish the notice of levy, further violating George's right to privacy and clouding George's title. These actions took place without regard for George's right to Due Process. At no point during the proceedings was George given the proper opportunity to refute the claims of the Commissioner nor was George present at any tribunal in which pronounced judgments of property were made. A liability conclusively presumed is not due process of law.

Showing nothing but disregard for the Constitution and this Court, the Ninth Circuit Court of Appeals held in favor of the Commissioner with respect to the primary issues presented. In this regard, the ruling has no basis in law, it did not consider the direct tax apportionment requirement, constitutional immunity aspect of this case nor did it uphold Supreme Court decisions. It simply referred to another 9th Cir. case, *United States v. Romero* (1980), that has no significant relevance to the case presented. *See Appendix*.

III. The Case in Hand

At present, George asserts: (1) immunity from unapportioned direct taxes as secured by Article I of the Constitution and protected by the 14th Amendment; (2) the 16th Amendment, as interpreted by the Commissioner and the Attorney General, does not fit the legal definition nor does it fit the constitutional intent of an amendment; (3) the public was not given proper notice about the passage and implications of the 16th Amendment thus violating public notice and disclosure laws; and (4) the Commissioner violated privacy, confidentiality and due process laws by disclosing return information and seizing assets.

Petitioner claims direct damages totaling $5 million for time spent and privacy violations as well as punitive damages totaling $120 million (for use in establishing an organization to promote the restoration of constitutional principles). The damages are warranted in this case because the Commissioner has been in an endless pursuit, over the past 10 years, to harass, discredit, etc., causing George much pain and suffering as well as time and money. The Commissioner's conduct has been intentional, outrageous, and calculated to have a chilling effect on the exercise of George's constitutional rights.

REASONS FOR GRANTING THE PETITION

Nothing could be more important than the right to earn a living. The fundamental right to one's labor is an unalienable right established in the Declaration of Independence. It is a well-regarded economic and legal principle that "The property which every man has in his own labor is the most sacred and inviolable." The government is supposed to prevent infringement upon this sacred right.

Instead, the federal government infringes itself by interfering with the right to contract and the right to the fruits of one's own labor. The taxes imposed upon the average American come to over half their earnings. "Americans are spending 5.4 billion hours and $200 billion a year just in compliance costs, not counting the taxes paid, i.e., more time and money than it takes to produce every car, truck and van each year in the United States." *See The Freedom and Fairness Restoration Act Summary,* flattax.house.gov (1999). The agencies of the federal government are collaborating to institute a state of peonage, "a condition of servitude (prohibited by the Thirteenth Amendment) compelling persons to perform labor in order to pay off a debt." (Black's Law, 6th Ed.) The federal debt is over $6 trillion and the American people and their posterity, through the federal personal income tax, are the primary source of payment. The Commissioner affirms this fact in his 2001 report, which states: 89.5% of Internal Revenue Collections come from individual income taxes, including employment taxes; 7.8% come

from the corporate income tax; and a mere 2.7% come from excise taxes. *See Internal Revenue Service Data Book* (2001).

The current federal system of taxation clearly violates the original intent of the Constitution as advertised by the Federalists, as implemented throughout the first 125 years of the republic's existence, and as upheld by this Court. The *Federalist Papers* say, "it is impracticable to raise any very considerable sums by direct taxation;" that taxes must be raised by "duties," "imposts and from excises;" and that "personal property is too precarious and invisible a fund to be laid hold of in any other way than by the imperceptible agency of taxes on consumption." *See Federalist Number XII, The Utility of the Union in Respect to Revenue*. In the *Springer* case, the court analyzed all tax legislation that had taken place from the time the Constitution went into operation and concluded, "That It will thus be seen that whenever the government has imposed a tax which it recognized as a direct tax, it has never been applied to any objects but real estate and slaves." *Springer v. U S*, 102 U.S. 586 (1880). The direct tax, as defined by the Constitution, is meant for times of emergency, and then only when apportioned among the states. The Constitution provides for other means of taxation, such as excise taxes, that are more economical, transparent to the average citizen, and therefore far better for the country in general.

I. Review is Warranted in this Case Because this Court Provides the Only Remedy Available

The lower court did not rule on the matter of constitutional immunity. The tax court seems unable to rule and the appellate court simply rubber stamped the tax court decision. This Court is the only competent tribunal available to rule on the matter. The lower court and the Commissioner must not have a clear Supreme Court decision to refer to; otherwise they would be guided by it.

Additionally, if the court for the ninth circuit is relying on their own decisions, without regard to Supreme Court rulings, how can they be acting uniformly with other courts? A federal standard of uniformity is needed to ensure equal treatment.

II. Review is Warranted in this Case Because the Lower Court Failed to Address Primary Issues

With regard to the primary issues presented, the Ninth Circuit Court of Appeals simply stated, "The tax court properly found that George is subject to the federal system of taxation. *See, e.g., United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1980)." *See Appendix* p.ii. This statement does not constitute a ruling. *Romero* is a willful failure to file case where the court said, "Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable."

George's case is not about whether wages are income; this case is about fundamental constitutional rights, whether states have the authority to abridge the immunities of citizens, the amendment process, and whether the Commissioner seized property without due process. As this Court held: "Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three." *See Smith v. State of Texas*, 233 U.S. 630 (1914).

III. Review is Warranted in this Case Because the Ratification and Terms of the Sixteenth Amendment were not Properly Disclosed.

There is no indication that the People were properly notified when the Sixteenth Amendment was proclaimed ratified on February 3, 1913 and there is compelling evidence that fraud was committed in the ratification process. Upon recent review of the microfiche archives of the *New York Times* and *Los Angeles Times*, including February and March (1913), there is no indication that notice was given that the amendment was ratified, let alone what the implications would be. This is a clear violation of *Revised Statutes, Sec. 205* as well as Public Disclosure law. This is but one example of how the federal government, incrementally and under cover of the night, systematically violates the constitutional compact with the People.

CONCLUSION

The current personal income tax system, as imposed by the Commissioner, violates the original intent of the taxation and apportionment clauses set forth in the Constitution. This has a cascading affect on other constitutional protections. The IRS routinely forces financial institutions to turn over funds without a warrant or court order; they single out and label constitutional advocates "illegal tax protestors," a badge of infamy; they impair the ability to contract by requiring federal tax forms and social security numbers as preconditions of employment; they summons financial information, such as detailed stock transactions, from employers and stockbrokers; impose excessive fines; engage in cruel punishment; and have a general disregard for property and due process. These practices must be stopped. The federal personal income tax is simply *not compatible* with the Constitution.

In conclusion, the writ of certiorari should be granted.

Respectfully submitted,

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Pro Se Petitioner

June 10, 2002

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JAN 02 2002
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRUCUIT

RICHARD E. GEORGE, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	No. 01-70133 Tax Ct. No. 11164-99 MEMORANDUM*

Appeal from the United States Tax Court
Submitted December 17, 2001**

Before: SCHROEDER, Chief Judge, TROTT and PAEZ, Circuit Judges

Richard E. George appeals pro se from a decision of the tax court determining tax deficiency for 1997 and imposing penalties. We have jurisdiction pursuant to 26 U.S.C. § 7482(a), and we affirm in part, and vacate and remand in part.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

** The Panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, George's request for oral argument is denied.

We review de novo the tax court's conclusions of law and for clear error in findings of fact. *Kelley v. Comm'r*, 45 F.3d 348, 350 (9th Cir. 1985). We review for abuse of discretion imposition of penalties and evidentiary sanctions. *See Larsen v. Comm'r*, 765 F.2d 939, 941 (9th Cir. 1985) (per curiam) (imposition of penalties pursuant to 26 U.S.C. § 6673); Smith v. Comm'r, 800 F.2d 930, 934 (1986) (imposition of evidentiary sanctions).

The tax court properly found that George is subject to the federal system of taxation. *See, e.g., United States v. Romero*, 640 F. 2d 1014, 1016 (9th Cir. 1980). The tax court acted within its discretion to impose a penalty under 26 U.S.C. § 6673 because George pursued frivolous claims for purpose of delay. See Grimes v. Comm'r 806 F.2d 1451, 1454 (9th Cir. 1986) (per curiam). The tax court properly disallowed the deductions George urged in his proposed amended tax return, because George did not provide credible evidence to substantiate the deductions. See 26 U.S.C. § 7491. The tax court acted within its discretion when it excluded documents George proffered at trial because, as George conceded, he did not provide the Commissioner with copies of the documents before trial, as required by the courts's standing order. *See Smith*, 800 F.2d at 934.

As the Commissioner concedes, the tax court erred by failing to credit George for $2,154.48 in social security overpayments. See 26 U.S.C. §§ 3101(a), 3121(a)(1); 26 C.F.R. §§ 31.3101-2(a), 3121(a)(1)-1; 1997 Cost-of-Living Increase and Other Determinations, 61 Fed. Reg. 55346 (Oct. 25, 1996). We therefore remand for recalculation of George's deficiency in light of this credit.

Each part shall bear its own costs on appeal.

AFFIRMED IN PART, VACATED and REMANDED IN PART.

FILED
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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRUCUIT

RICHARD E. GEORGE, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	No. 01-70133 Tax Ct. No. 11164-99 ORDER

Before: SCHROEDER, Chief Judge, TROTT and PAEZ, Circuit Judges

Appellant's petition for panel rehearing is denied. No further filings shall be accepted in this closed appeal.

Supreme Court, U.S.
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On Petition For Writ Of Certiorari From The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX

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TAX COURT RULES INVOLVED

Rule 91. Stipulations for Trial, states, in part, (1) General: Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate; (2) *Stipulations to Be Comprehensive*[1]*:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

Rule 142. Burden of Proof (a) General: (1) The burden of proof shall be upon the petitioner, except as otherwise provided by statute. (2) See Code Section 7491[2] where credible evidence is introduced by the taxpayer.

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[1] The Commissioner did not participate in the tax court discovery process and then, at the last minute, sought a non-comprehensive stipulation. As part of discovery, petitioner requested items such as "all evidence and information" relied upon to determine that petitioner had a "tax liability." Commissioner's counsel responded by stating "The information you seek is not relevant to the subject matter of your case" and then proceeded to request and was awarded sanctions against George for not agreeing to a one-sided stipulation of facts that included only Form W-2 wages (the presumed evidence of liability) and excluded facts George claimed to be relevant, such as property taxes paid.

[2] 26 U.S.C. 7491. Burden of proof (a) Burden shifts where taxpayer produces credible evidence (1) General rule If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

UNITED STATES TAX COURT

WASHINGTON, DC 20217

RICHARD E. GEORGE, Petitioner,	)	
v.	)	Docket No. 11164-99
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER

Petitioner has moved to compel answers to interrogatories and request for production of documents (the motion). Rule 70(b)(1), Tax Court Rules of Practice and Procedure, states: "The information or response sought through discovery may concern any matter not privilege and which is relevant to the subject matter involved in the pending case." Petitioner has failed to demonstrate the relevance of the information that he seeks to discover to the subject matter of this case. For that reason, the motion shall be denied.

The Clerk is directed to attach a copy of the motion to the order served on petitioner's counsel.

Upon due consideration of the foregoing, it is ORDERED that the motion is denied.

(Signed) James S. Halpern
James S. Halpern
Judge

Dated: Washington, D.C.
April 21, 2000

Richard E. George
Bench Opinion by Judge James S. Halpern
Docket No. 11164-99 June 15, 2000

THE COURT: The Court has decided to render oral findings of fact and opinion in this case, and the following represents the Court's oral findings of fact and opinion.

This bench opinion is made pursuant to the authority granted by Section 7549(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court Rules of Practice and Procedure.

By notice of deficiency dated April 20, 1999 (the notice), respondent determined a deficiency in petitioner's federal income tax for 1997 of $32,905 and an addition to tax under section 6651(a)(1) of $8,226.25.

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Certain facts have been stipulated by the parties and were recited by counsel for respondent at the start of the trial. Those facts are incorporated herein by this reference.

At the time the petition was filed, petitioner resided in Menlo Park, California.

Petitioner filed a purported 1997 Form 1040, U.S. Individual Income Tax Return (the original return), on or about April 15, 1998. On line 7 of the original return petitioner wrote zero as the amount of wages, salaries, tips, et cetera. On line 9 he wrote that he had received $463 in dividends. On line 37 he entered $2,650 as the amount of personal exemption. On line 38 petitioner entered zero as the amount of his taxable income, and on line 39 he entered zero as the amount of tax due.

On December 8, 1999, petitioner's attorney submitted a Form 1040X, Amended U.S. Individual Income Tax Return, for

1997 (the amended return), to respondent. Respondent did not accept the amended return.

In the notice, the principal adjustment leading to respondent's determination of the deficiency in question is the inclusion in the petitioner's gross income of wages in the amount of $128,444. Petitioner did receive wages of $128,444 in 1997.

In the notice, respondent calculated petitioner's taxable income by allowing petitioner a standard deduction of $4,150, and decreased his personal exemption by $159. At trial, petitioner claimed substantial deductions in lieu of the standard deduction. Except in one respect, petitioner failed to substantiate his entitlement to the claimed deductions. Petitioner claims an interest deduction of $47,033, which amount of mortgage interest payments was reported to respondent by certain mortgage lending institutions. We accept that petitioner paid interest in that amount. Nevertheless, petitioner has failed to show that he is entitled to deduct that amount of interest as a trade or business expense or otherwise. (See sec. 163.) On the amended return, petitioner claimed a home mortgage interest deduction of $25,141. We will allow him a deduction for interest paid in that amount in lieu of the standard deduction allowed by respondent. We allow him no additional itemized deductions.

Section 6652(a)(1) imposes an addition to tax for a taxpayer's failure to file a timely return, unless the taxpayer can establish that such failure "is due to reasonable cause and not due to willful neglect." The original return correctly states petitioner's name, address, Social Security number, filing status, and exemptions. It is signed and dated. Its main defect is that it contains zeros where greater amounts should be shown. It constitutes a return, see Unites States v. Long, 618 F.2d 74, 75 (9th Cir. 1980), and apparently was timely filed. We do not sustain respondent's addition to tax under section 6651(a)(1).

Respondent also moves that the Court impose a sanction against petitioner under section 6673(a). Petitioner objects. Under section 6673(a), we may impose a penalty not to exceed $25,000 where a taxpayer has instituted or maintained proceedings primarily for delay or where the taxpayer takes posisitions that are frivolous or groundless. Sec. 6673(a)(1)(A) and (B).

We believe that petitioner has maintained this proceeding primarily for delay and has taken positions that are frivolous and groundless. The principal adjustment giving rise to the deficiency in this case is respondent's determination that petitioner had wage income in 1997 of $128,444. In the petitioner, petitioner assigned error to that determination and averred that he had in his possession "sufficient information and documentation to substantiate the accuracy of Petitioner's income, including but not limited to Wages," for 1997. At trial, petitioner conceded that he had wage income in the amount of $128,444. Prior to trial, petitioner refused to stipulate with respondent that he had received Forms W-2 showing such income. During an informal pretrial conference with the Court, petitioner refused to stipulate to his tax return for 1997 or the W-2s. Respondent was compelled to bring witnesses representing two of petitioner's former employers, prepared to testify to petitioner's wage income for 1997. In light of petitioner's averment in the petition that he could substantiate the accuracy of his wage income and his concession at trial that he had wage income in the amount determined by responent, the Court interprets petitioner's refusal to stipulate with respect to his wage income as a tactic designed primarily to delay this proceeding. Moreover, petitioner's concession leads to the conclusion that his position in this case is groundless. Finally, petitioner has made constitutional and other arguments that have been soundly rejected by the courts, and must be construed as groundless. At trial, petitioner maintained that only corporations, and not individuals, were subject to the income tax. That is a groundless argument. See, e.g., Liddane v. Commissioner, T.C. Memo. 1998-259.

Because petitioner has maintained this proceeding primarily for delay and has taken positions that are frivolous and groundless, we sanction him by imposing upon him a penalty under section 6673(a)(1) of $2,500.

Petitioner has asked for sanction against respondent and his counsel. Petitioner has provided no grounds to sanction respondent or his counsel.

That concludes this bench opinion. Decision will be entered pursuant to Rule 155.

(Whereupon, at 9:35 a.m. the bench opinion in the above-entitled matter was adjourned.)

UNITED STATES TAX COURT

RICHARD E. GEORGE, Petitioner,	)	
v.	)	Docket No. 11164-99
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

DECISION

Pursuant to the opinion of the Court filed June 15, 2000, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED AND DECIDED: That there is a deficiency in income tax due from the petitioner for the taxable year 1997 in the amount of $26,466.00;

That there is no penalty due from the petitioner for the taxable year 1997, under the provisions of I.R.C. §6651(a)(1); and

That there is a sanction due from the petitioner for the taxable year 1997, under the provisions of I.R.C. § 6673(a)(1), in the amount of $2,500.

(Signed) James S. Halpern

Judge.

Entered: OCT 19 2000

UNITED STATES TAX COURT

RICHARD E. GEORGE, Petitioner,	)	
v.	)	Docket No. 11164-99
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

NOTICE OF APPEAL

Notice is hereby given that petitioner Richard E. George appeals the above-captioned Tax Court decision, entered on the 19th day of October 2000, to the United States Court of Appeals for the 9th Circuit.

The primary reason for the appeal is that the respondent and the Tax Court are demanding payment of an un-apportioned direct tax in violation of Article I of the United States Constitution. The Court stated in a pre-trial conference that the 16th amendment allows such a direct tax to be applied to the petitioner, whereby the petitioner stated at trial that the 16th amendment does not apply in this case since the 14th amendment does not allow states to pass laws, including amendments, that would abridge the immunities of United States citizens; and the immunity from direct taxation would constitute such an immunity. The Court avoided the issue by stating only that the argument had been "soundly rejected" without citing any District Court or Supreme Court decisions in support of its opinion.

Alternatively, if the Court upholds an un-apportioned direct tax against the petitioner, the respondent and the Court have erred by not allowing the petitioner to take deductions and making gross miscalculations contrary to overwhelming credible evidence provided by the petitioner.

Furthermore, the Court has erroneously imposed sanctions on the petitioner and the petitioner has substantially prevailed in this matter, placing the burden of proof on the respondent.

Dated this 15th day of January 2001

Without prejudice,

By: /s/ Richard E. George
Richard E. George
Petitioner
431 Central Avenue
Menlo Park, California 94025

01/19/01

UNITED STATES TAX COURT
DOCKET ENTRIES

Docket No. 11164-99
Richard E. George
v. COMMISSIONER OF INTERNAL REVENUE

Pro Se

431 Central Ave.
Menlo Park, CA 94025

NO.	DATE	EVENT	FILINGS AND PROCEEDINGS
01	06/18/99	PF	PETITION Filed: Fee Paid
02	06/18/99	DPT	DESIGNATION of Trial at San Francisco, CA
03	08/02/99	ACS	ANSWER (C/S 07/30/99).
04	12/29/99	NTD	NOTICE of Trial on 06/05/00 at San Francisco, CA.
05	12/29/99	SPTO	STANDING PRE-TRIAL ORDER attached to Notice of Trial
06	04/17/00	MOTP	MOTION by petr. to compel ans. to interr. & docu. w/Exs. (Filed & Served Per Judge)
07	04/21/00	MOT	MOTION by Jerold A. Reiton & Daren G. Wein to withdraw. (N.Obj) (C/S 04/17/00)
08	04/21/00	O	ORDER mot. to compel is Dn.
09	06/05/00	TRL	TRIAL before Judge Halpern at San Francisco, CA Also called 6/7/00 & 6/15/00. 6-7-00 Mot. to impose sanct. filed (see below) --BENCH OPINION RENDERED, JUDGE HALPERN

(Continuation)

NO.	DATE	EVENT	FILINGS AND PROCEEDINGS
10	06/07/00	TMEM	TRIAL MEMORANDUM for petr. (SFC)
11	06/07/00	SUPP	SUPPLEMENTAL TRIAL MEMORANDUM for petr. (SFC)
12	06/07/00	TMEM	TRIAL MEMORANDUM for resp. (C/S 5/18/00) (SFC)
13	06/07/00	MOTR	MOTION by resp. to impose sanctions. (C/S 6/7/00) (SFC) (MOOT--NO ORDER)
14	06/12/00	MOTP	MOTION by petr. to impose sanctions. (served w/out action - per Judge) (MOOT--NO ORDER)
15	07/05/00	TRAN	TRANSCRIPT of 6/7/00 rec'd. (TRL)
16	07/15/00	TRAN	TRANSCRIPT of 6/15/00 rec'd. (Bench Opn)
17	07/19/00	NSTS	NOTICE of Service of Transcript of trial. (Decision will be entered under Rule 155.)
18	09/18/00	COMR	COMPUTATION by resp.
19	09/18/00	NOF	NOTICE of Filing Resp's comp. Obj/Comp to be filed: 10/10/00
20	10/11/00	COMP	COMPUTATION by petr.
21	10/19/00	DEC	DECISION ENTERED, Judge Halpern
22	01/16/01	NOAP	NOTICE OF APPEAL by petr. to U.S.C.A., 9th Cir. NO FEE REC'D.
23	01/19/01	NOFC	NOTICE of Filing with copy of Not. of App. sent to the parties.